

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Hezekiah Mendoza

v.

Civil No. 17-cv-318-LM

State of New Hampshire

REPORT AND RECOMMENDATION

Hezekiah Mendoza filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. No. 1). The petition did not include any claims, or any indication that Mendoza has exhausted any state remedies relating to any claims he may have.

On October 18, 2017, the court issued an Order (Doc. No. 6) granting Mendoza thirty days to file an amended petition, and stated that Mendoza's failure to file an amended petition could result in dismissal of this action. Mendoza has not responded to the October 18 Order. Accordingly, the district judge should dismiss the petition without prejudice, pursuant to Rule 4 of the Rules Governing § 2254 Cases ("§ 2254 Rules") and LR 4.3(d)(4).

Certificate of Appealability

The § 2254 Rules require the court to "issue or deny a certificate of appealability when it enters a final order adverse to the party." § 2254 Rule 11(a). The court will issue

the certificate "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner has failed to make such a showing. Accordingly, the district judge should decline to issue a certificate of appealability in this case.

Conclusion

For the foregoing reasons, the district judge should dismiss the petition, without prejudice, pursuant to § 2254 Rule 4 and LR 4.3(d)(4); and decline to issue a certificate of appealability. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen day period may be extended upon motion. Failure to file objections within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).



Andrea K. Johnstone
United States Magistrate Judge

December 7, 2017

cc: Hezekiah Mendoza, Jr., pro se